

Procurement Guidance - (1/2014)

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T3.3.1 - Contract Funding, Financing & Payment Revised 8/2009

A Contract Funding, Financing & Payment

1 Contract Funding Revised 7/2013

a. *Anti-Deficiency Act.* The FAA must comply with the Anti-Deficiency Act (31 U.S.C. 1341) and all other fiscal laws. The Anti-Deficiency Act prohibits FAA from creating or authorizing an obligation in excess of the funds available, or in advance of appropriations, unless otherwise authorized by law. The Act applies to all forms of procurement, including contracts and purchase card transactions.

b. *Funds Availability.* Before executing a contractual instrument that obligates funds, the Contracting Officer (CO) must ensure sufficient funds are available. The CO must obtain written assurance from the program/requisitioning office that funds are available.

c. *Awards Subject to Availability of Funds.* There may be times when a contract will be awarded before funds become available, such as an award for services to begin at the beginning of the next fiscal year. When this occurs, the contractor must be put on notice that the award is subject to the availability of funds; the CO must incorporate AMS Clause 3.3.1-10, Availability of Funds, or AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year, into the SIR or contract.

d. *Services Crossing Fiscal Years.* The FAA may enter into contracts for severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

e. *Distribution to Accounting Office.* The CO should provide copies of all contract awards and modifications to the accounting office to ensure that it can properly document and track payments and available funding.

f. *Timely Deobligation of Unused Funds.* The CO and program office are encouraged to periodically review the funding allocated to each contract or order upon the completion of each contract period, option period or upon completion of a contract line item. The review is intended to determine whether contract line items contain unused funds that can be deobligated. Determining whether funds can be deobligated as soon as possible after each contract period or completion of contract line items helps minimize costs associated with contract administration and the contract closeout processes. Timely deobligation of unused funds also allows for the possible use of those funds elsewhere.

2 Continuing Resolution Revised 10/2007

a. *Description.* A continuing resolution (CR) is a type of appropriations legislation to temporarily fund Government operations and programs when a formal appropriation bill(s) has not been signed into law before the start of a new fiscal year. A CR funds existing operations and programs at current or reduced levels for a stated period of time. The stated period time could range from several weeks to many months. Generally, a CR funds only on-going operations, and does not fund new initiatives or expanded scope for existing programs.

b. *Subject to the Availability of Funds and CR.* To allow for the solicitation of requirements before funds becoming available, the CO may issue a SIR with clauses that expressly condition FAA's obligation under the contract upon the availability of funds. (See Contract Funding above for more information).

c. *Coordination.* To ensure available funding is not exceeded and to comply with conditions under a CR, the CO should consult with:

(1) Legal Counsel. Legal counsel's review a proposed procurement action will ensure that award complies with CR conditions;

(2) Budget and Finance. To ensure that procurement activity complies with FAA's overall budget allowance during a CR, the CO should consult with the budget or finance office or review any fiscal or CR guidance before award; and

(3) Program Office. Because a CR affects the overall operations and planning of FAA programs, the CO should coordinate with the program office to ensure that an award is within their available budget.

3 Electronic Funds Transfer Revised 1/2012

a. Electronic Funds Transfer (EFT) applies to all new contract awards and contract modifications executed, unless extenuating circumstances exist as described below. Additional EFT guidance and clauses pertaining to real property and utilities are in AMS Real Estate Guidance 3.1.4.

b. The FAA will protect against improper disclosure of a contractor's EFT information.

c. 31 U.S.C. 3332 requires all payments to be made through EFT. The Manager, Accounting Operations Division, AMZ-100, may determine that submission of EFT information is not required and grant an EFT waiver if a vendor meets one of the exceptions listed below:

(1) Contracts awarded by COs outside the United States and Puerto Rico may provide for payment by other than EFT when EFT payments are not supported by the foreign country. EFT payment may still be used, if the political, financial and communications infrastructure in the foreign country supports payment by EFT or payments in other than U.S. currency may be made safely;

(2) Contracts paid in other than U.S. currency may provide for payment by other than EFT. EFT payment may still be used, if the political, financial and communications infrastructure in the foreign country supports payment by EFT or payments in other than U.S. currency may be made safely;

(3) Classified contracts when EFT payments could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations;

(4) Contracts executed by deployed COs in the course of military operations, including but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) where: (a) EFT payment is not known to be possible; or (b) EFT payment would not support the objectives of the operation.

(5) Contracts executed by any CO conducting emergency operations, such as responses to natural disasters or national or civil emergencies, may provide for payments by other than EFT where: (a) EFT payment is not known to be possible; or (b) EFT payment would not support the objectives of the operation.

(6) When FAA does not expect to make more than one payment to the same recipient within a one-year period and the payment is non-recurring;

(7) When FAA's need for goods or services is of such unusual and compelling urgency that FAA would be seriously injured unless payment is made by a method other than EFT;

(8) Contracts where the contractor claims that payment by EFT would impose a hardship due to a mental disability or a geographic barrier.

d. *Waiver requests.* The Accounting Operations Division will review and approve or disapprove all vendor requests for exceptions to the EFT payment requirement. The waiver process for EFT payments is:

(1) The CO provides the applicable EFT clauses as part of the solicitation package.

(2) If the otherwise successful offeror claims an inability to comply with the EFT requirement, the CO requests that vendor complete an Electronic Funds Transfer (EFT) Waiver Request Form (see AMS Procurement Forms). The waiver request includes the contractor's justification for not receiving payment by EFT. The CO forwards the waiver request, together with a recommendation and the completed DELPHI Vendor Entry Worksheet (see the PRISM website (FAA only) to the Accounting Operations Division, AMZ-100.

(3) The Accounting Operations Division approves or disapproves the waiver in writing and returns the signed determination to the CO. The waiver determination includes recommendations to assist the vendor become capable of receiving EFT payments. The CO retains a copy of the waiver request disposition in the contract file.

(4) If the waiver is disapproved, the CO may consult with the Accounts Payable manager for further guidance.

4 System for Award Management (SAM) Revised 7/2012

a. System for Award Management (SAM) applies to all new contract awards, contract modifications, agreements, orders, or leases executed. Applicable SAM clauses for real property or utility contracts or agreements are specified in Real Estate Guidance. SAM is the primary Government repository for contractor information required for doing business with the Government. SAM requires a Data Universal Numbering System (DUNS) number for registration. The DUNS is the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities. Data Universal Numbering System +4 (DUNS +4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts for the same parent concern. Registered in the SAM database means that the contractor has entered all mandatory information, including the DUNS number or the DUNS +4 number, into the SAM database.

b. Prospective contractors must be registered in the SAM database before award of a contract or agreement, except for:

(1) Purchases made by using a Government purchase card;

(2) Classified contracts when registration in the SAM database, or use of SAM data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by:

(a) Deployed COs in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7); or

(b) COs conducting emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(4) Contracts to support unusual or compelling needs. A compelling need is where FAA would be seriously injured if the contract is not awarded;

(5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain SAM registration;

(6) One time/single payment contracts or agreements, such as Real Property purchase and sales agreements, where the seller of the property is not in the practice of offering real property to

FAA as a commercial practice and does not anticipate acting as a vendor to FAA in the foreseeable future; or

(7) Long term leases and utility contracts where a SAM clause is not currently in effect and it is determined by the CO that forcing compliance is impractical.

c. In contracts or agreements awarded under paragraph (b) (3) or (4) of this section, the CO should modify the contract or agreement to require SAM registration as soon as practical after award is made.

d. *Change of Name in SAM.*

(1) The contractor must provide the responsible CO a minimum of one business day's written notification of its intention to change its business name in the SAM database, comply with the requirements of a novation or change of name agreement in AMS Procurement Guidance, and agree in writing to the timeline and procedures specified by the responsible CO for the change. The contractor must provide the CO documentation to support the legally changed name. This notification is required when the contractor has:

(a) Legally changed its business name;

(b) Changed its "doing business as" name;

(c) Changed its division name; or

(d) Transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in AMS Procurement Guidance.

(2) If the contractor fails to comply with the requirements AMS Clause 3.3.1-33, System for Award Management, and has not provided a properly executed novation or change-of-name agreement, the SAM information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of AMS Clause 3.3.1-34, Payment by Electronic Funds Transfer/System for Award Management. If the contractor's EFT information in SAM is considered to be incorrect:

(a) FAA need not make payment to the contractor until correct EFT information is entered into the SAM database; and

(b) Any invoice or contract financing request must be deemed not to be a proper invoice for the purpose of prompt payment under the contract.

(3) The contractor may not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the SAM record unless an assignment of claims has been properly executed. (See AMS Procurement Guidance T3.3.1, Assignment of Claims)

(4) Assignees must be separately registered in the SAM database. Information provided to the contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of AMS Clause 3.3.1-34, Payment by Electronic Funds Transfer/System for Award Management.

e. Unless the acquisition is exempt, the CO:

(1) Must verify that the prospective contractor is registered in the SAM database before awarding a contract or agreement;

(2) Should use the DUNS number or, if applicable, the DUNS+4 number, to verify registration:

(a) On the SAM website; or

(b) By calling toll-free: 1-888-227-2423, commercial: (269) 961-5757.

(3) When a CO modifies an existing contract or agreement that does not already include the requirement to be registered in SAM, the CO must then incorporate, as appropriate, AMS Clause 3.3.1-33, System for Award Management.

(4) Need not verify registration before placing an order or call if the contract or agreement includes the clause at AMS Clause 3.3.1-33.

f. If the CO, when awarding a contract or agreement, determines that a prospective contractor is not registered in SAM and an exception to the registration requirements for the award does not apply, the CO:

(1) Determines if the needs of the requiring activity allow for a delay. If a delay is allowable, the CO advises the apparently successful offeror of the required date to become registered. If the offeror does not become registered by the required date, the CO, after consultation with the program office, proceeds to award to the next otherwise successful registered offeror following the same procedures (i.e., if the next apparently successful offeror is not registered, the CO must advise the offeror of the required date to become registered, etc.); or

(2) Determines if the needs of the requiring activity do not allow for a delay. If the needs do not reasonably allow for a delay, the CO will proceed to award to the next otherwise successful registered offeror. Written approval is required at one level above the CO.

g. The FAA must protect against improper disclosure of contractor SAM information.

h. In accordance with FAA procedures, the CO provides the DUNS number or, if applicable, the DUNS +4 on contractual documents transmitted to the payment office.

5 Types of Payment Revised 10/2007

- a. Payment provisions should balance protection of FAA's interests against adequately compensating the contractor for products delivered or services performed, including construction.
- b. COs should maintain a payment log for each contract detailing funding and payment information, i.e., a log showing available funding, date and amount of invoices, balance of funding after payments, etc). This log should be filed in the official contract file.
- c. COs should consider the following alternatives when establishing a basis for payment in award documents:

Type of Payment	Description
Single Payment (Lump Sum)	Where one payment is made to a contractor after completion and acceptance of all work. (Preferred method)
Partial Payment	Payments authorized to be made upon acceptance of one or more complete units (or one or more distinct items of service) called for under a contract.
Progress Payment	Multiple payments made prior to delivery during performance based on a percentage or stage of completion.
Recurring Payment	Payments made on a fixed, periodic basis for the delivery or performance of recurring firm fixed-price products or services.
Provisional Payment	Payments made for the delivery or performance of products or services recurring under a contract.
Advance Payment	Payment made before any performance of work under the contract. Payment should be secured by bond or collateral with expenditures made from a joint account requiring FAA approval. Considered to be contract financing, advance payments are the least preferred and must be authorized sparingly.
Performance-Based Payment	Contract financing payments that are not payments for accepted items.

6 Single and Partial Payments Revised 10/2007

a. Single Payments (Lump Sum).

- (1) Where one payment is made to a contractor after completion and acceptance of all work.

(2) The preferred method as FAA only makes payment after acceptance of all contract work (minimal risk).

b. *Partial Payments.*

(1) Payments authorized to be made upon acceptance of one or more complete units (or one or more distinct items of service) called for under a contract.

(2) Despite partial payments being generally treated as a method of payment rather than a method of contract financing, the use of partial payments can provide the assistance necessary for some contractors to participate in FAA contracts.

(3) Circumstances where partial payments should be prohibited include:

(a) When the additional administrative time required to issue 2 or more payments may not be cost effective.

(b) When partial delivery of individual components does not constitute a usable item on its own.

7 Progress Payments Revised 10/2007

a. *Definition.* Progress payments consist of multiple payments made during performance and prior to delivery based on a percentage or stage of completion. Payments must be secured against materials/equipment purchased until liquidated by deliveries under the contract.

b. *Basis.* FAA will make progress payments on the basis of percentage or stage of completion. Typical progress payment provisions call for payment of part of the contract price only when a completed stage of work (milestone) or a completed component can be said to be of value to FAA in the event the contract were to be terminated at that point; however, progress payment schedules can be established that will allow payment based on an estimated percentage of completion. Generally, the progress payment rate to the prime contractor is 80% of the total costs of performing the contract and 85% for small businesses. The CO should provide for progress payments if the contractor:

(1) Will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work is scheduled to begin; and

(2) Will make expenditures for contract performance during the pre-delivery period that have a significant impact on the contractor's working capital.

c. *Withholding payment.* When there is reason to doubt the amount of a progress payment request, only the doubtful amount should be withheld, subject to later adjustment after review or audit. Any clearly proper and due amounts should be paid without awaiting resolution of the differences. Post payment reviews may be made when considered desirable by the CO to determine the validity of progress payments already made and those expected to be made in the

future. The post payment review should include a review of whether or not the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion.

d. *Subcontracts*. The CO should encourage contractors to provide progress payments to subcontractors subject to the bases described in subparagraph (b), "Basis." The CO should consider the following when contractors submit payment requests that include progress payments for subcontractors:

(1) The contractor's request for payment may include the full amount paid to subcontractors as progress payments;

(2) The contractor's inclusion of the substance of clause "Progress Payments" in the prime contract, modified to indicate that:

(a) The contractor, not FAA, awards the subcontract and administers the progress payments;

(b) Title will vest in FAA, not the contractor;

(c) The subcontractor will install the necessary management control systems, including internal audit procedures; and

(d) The subcontractor will allow the CO/FAA access to reports and records.

The CO should, to the extent appropriate, review the subcontract as part of the overall administration of progress payments in the prime contract.

(3) If the contractor makes progress payments to a subcontractor under a cost-reimbursement prime contract, the CO may accept the progress payments as reimbursable costs of the prime contract only under the following conditions:

(a) The payments are made in accordance with this subparagraph (d), "Subcontracts;"

(b) The subcontractor complies with relevant liquidation principles;

(c) The subcontract contains progress payments terms as defined in this section; and

(d) The subcontractor has established a FAA-approved job cost accounting system that is satisfactory for cost reimbursement contracts.

(4) If there is adequate protection to FAA through inclusion of appropriate clauses in subcontracts involving foreign subcontractor.

8 Recurring, Provisional, and Advance Payments Revised 10/2007

a. *Recurring Payments (Automatic Payments)*. Payments made on a fixed, periodic basis for the delivery or performance of recurring firm fixed-price products or services.

(1) COs must annotate on the award that payments are to be setup on the Recurring Invoice Template (auto pay).

(2) The CO must request an annual invoice from the contractor detailing the recurring fixed amount and the total amount. This annual invoice must be certified by the CO and submitted to accounting.

(3) If deductions are required, the CO must notify the accounting office in writing of the deduction to be made the following month, and the contract will be modified to reflect the change in value.

b. *Provisional Payments*. Payments made for the delivery or performance of products or services recurring under a contract. Invoices are necessary, receiving reports are not.

c. *Advance Payments*. Payment made before any performance of work under the contract. Payments should be secured by bond or collateral with expenditures made from a joint account requiring FAA approval. (See Finance under this section for more information)

9 Performance-based Payments Added 10/2007

a. *General*.

(1) Performance-based payments (PBP) are contract financing payments that are not payments for accepted items. The CO may use PBP in contracts, subject to the guidelines below, when the CO finds them practical and the contractor agrees to their use.

(2) PBP do not apply to the following:

(a) Payments under cost-reimbursement contracts;

(b) Contracts for architect-engineer services or construction, when the contracts provide for progress payments based upon a percentage or stage of completion;

(c) Contracts for research or development; or

(d) Contracts awarded through sealed bid or competitive negotiation procedures.

(3) PBP are fully recoverable, in the same manner as progress payments, in the event of default. PBP should not be used when other forms of contract financing are provided.

(4) For accounting purposes, PBP should be treated like progress payments based on costs.

(5) Because PBP are contract financing payments they are not subject to the interest-penalty provisions of prompt payment clauses; however, PBP should be made in accordance with FAA's policy for prompt payment of contract financing payments.

b. Criteria for use.

(1) PBP should be used only if the following conditions are met:

(a) The CO and offeror are able to agree on the performance-based payment terms;

(b) The contract is a definitized fixed-price type contract; and

(c) The contract does not provide for other methods of contract financing.

c. Application. The CO should determine if PBP will be made either on a whole contract or deliverable item basis. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item.

A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes, with a unit price of \$1,000,000 each, has ten deliverable items (the separate planes). A contract line item for 1 lot of 10 airplanes, with a lot price of \$10,000,000, has only one deliverable item (the lot).

d. Establishing Performance Bases. PBP may be made on any of the following bases:

(1) Specifically described events (e.g., milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment will be an integral and necessary part of contract performance and will be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, or other such actions will not be events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but successful performance of each such event or performance criterion will be readily verifiable.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. In contrast, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event or criterion. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The following will be included in the contract:

(a) The contract will not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(b) Severable events or criteria will be specifically identified in the contract.

(c) The contract will identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(d) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion will be part of the performance necessary for that deliverable item and will be identified to a specific contract line item or subline item.

e. Establishing Performance-based Finance Payment Amounts.

(1) The CO will establish a complete, fully-defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the CO responsible for pricing the contract modification will adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments will not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis. The amount of each performance-based payment will be specifically stated either as a dollar amount or as a percentage of a specifically identified price (e.g., contract price, or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the CO has wide discretion as to the timing and amount of the performance-based payments, the CO must ensure that the total contract price is fair and reasonable. This fair and reasonable determination must consider all pertinent factors, including the financing costs to the Treasury of the performance-based payments. Performance-based payment amounts may be established on any rational basis determined by the CO or agency procedures, which may include (but are not limited to):

(a) Engineering estimates of stages of completion;

(b) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or

(c) The estimated projected cost of performance of particular events.

(3) When subsequent contract modifications are issued, the performance-based payment schedule will be adjusted as necessary to reflect the actions required by those contract modifications.

f. Instructions for Multiple Appropriations. If there is more than one appropriation account (or subaccount) funding payments on the contract, the CO will provide instructions to the payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

g. Liquidating Performance-based Finance Payments. Performance-based amounts will be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The CO will specify the liquidation rate or designated dollar amount in the contract. The method of liquidation will ensure complete liquidation no later than final payment.

(1) If the performance-based payments are established on a delivery item basis, the liquidation amount for each line item will be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation will be by predesignated liquidation amounts or liquidation percentages.

h. *Reviews.* The CO is responsible for determining what reviews are required for protection of FAA interests. The CO should consider the contractor's experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to FAA, post-payment reviews and verifications should normally be arranged as considered appropriate by the CO. If considered necessary by the CO, pre-payment reviews may be required.

i. *Incomplete Performance.* The CO will not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the CO will not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

j. *Government-caused Delay.* Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the CO may renegotiate the performance-based payment schedule to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

k. *Suspension or Reduction of Performance-based Payments.*

(1) *Enforcing the Clause.*

(a) The Progress Payments clause provides the CO the right to reduce or suspend progress payments, or to increase the liquidation rate under certain conditions; however, the CO should take these actions only in accordance with the contract terms and never precipitately or arbitrarily. These actions should be taken only after:

(i) Notifying the contractor of the intended action and providing an opportunity for discussion;

(ii) Evaluating the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements; and

(iii) Considering the general equities of the particular situation.

(b) The CO should take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

(c) In all cases, the CO should:

- (i) Act fairly and reasonably;
- (ii) Base decisions on substantial evidence; and
- (iii) Document the contract file. Findings made under the Progress Payments clause should be in writing.

(2) *Contractor Noncompliance.*

- (a) The contractor must comply with all material requirements of the contract. This includes the requirement to maintain an efficient and reliable accounting system and controls, adequate for the proper administration of progress payments. If the system or controls are deemed inadequate, progress payments should be suspended (or the portion of progress payments associated with the unacceptable portion of the contractor's accounting system should be suspended) until the necessary changes have been made.
- (b) If the contractor fails to comply with the contract without fault or negligence, the CO will not take action permitted by Progress Payments clause, other than to correct overpayments and collect amounts due from the contractor.

(3) *Unsatisfactory financial condition.*

- (a) If the CO finds that contract performance (including full liquidation of progress payments) is endangered by the contractor's financial condition, or by a failure to make progress, the CO should require the contractor to make additional operating or financial arrangements adequate for completing the contract without loss to FAA.
- (b) If the CO concludes that further progress payments would increase the probable loss to FAA, the CO should suspend progress payments and all other payments until the unliquidated balance of progress payments is eliminated.

(4) *Delinquency in payment of costs of performance.*

- (a) If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business, the CO should evaluate whether the delinquency is caused by an unsatisfactory financial condition and, if so, should apply the guidance in paragraph (c) of this section. If the contractor's financial condition is satisfactory, the CO should not deny progress payments if the contractor agrees to:

- (i) Cure the payment delinquencies;
- (ii) Avoid further delinquencies; and
- (iii) Make additional arrangements adequate for completing the contract without loss to FAA.

(b) If the contractor has, in good faith, disputed amounts claimed by subcontractors, suppliers, or others, the CO should not consider the payments delinquent until the amounts due are established by the parties through litigation or arbitration; however, the amounts should be excluded from costs eligible for progress payments so long as they are disputed.

(c) Determinations of delinquency in making contributions under employee pension, profit sharing, or stock ownership plans, and exclusion of costs for such contributions from progress payment requests should be in accordance with the procedures for progress payments.

l. *Title.*

(1) The CO must ensure that FAA title under the provisions of the Performance-Based Payments clause is not compromised by other encumbrances. Ordinarily, the CO, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the payment request.

(2) If the CO becomes aware of any arrangement or condition that would impair FAA's title to the property affected by the Performance-Based Payments clause, the CO should require additional protective provisions.

(3) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the CO may, if necessary, suspend or reduce payments under the terms of the Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the CO should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, False Claims Act.

m. *Risk of Loss.*

(1) Under the Performance-Based Payments clause, the contractor bears the risk for loss, theft, destruction, or damage to property, except for normal spoilage, affected by the clause even though title is vested in FAA. The clauses related to performance-based payments, default, and terminations do not constitute an assumption of risk by FAA, unless FAA has expressly assumed this risk.

(2) If a loss occurs in connection with property for which the contractor bears the risk, and the property is needed for performance, the contractor is obligated to repay FAA the performance-based payments related to the property.

(3) The contractor is not obligated to pay for the loss of property for which FAA has assumed the risk of loss; however, a serious loss may impede the satisfactory progress of contract performance, so that the CO may need to act under the Performance-Based Payments clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which FAA has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

10 Financing Payment Revised 10/2010

a. Prudent contract financing can be a useful working tool in FAA acquisitions. FAA financing may be provided only to the extent actually needed for prompt and efficient performance, considering the availability of private financing. Any undue risk of monetary loss to FAA through the financing must be avoided.

b. "Contract financing" is a contractual authorization for payments to a contractor prior to acceptance of products or services by FAA. Contract financing includes advance payments.

c. Contract financing methods are intended to be self-liquidating through contract performance. FAA may only use the methods for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets.

d. Advance payments are the least preferred method of contract financing and must be authorized sparingly. They should be authorized only if partial payments or progress payments are not feasible and private financing is not reasonably available.

(1) Payments under time-and-material or cost-reimbursement contracts made to small businesses in advance of payment to their vendors or subcontractors are not considered advance payments under this subpart. The items authorized for advance payment below do not require additional review and approval, while all others not identified below require submittal to the Chief of the Contracting Office (COCO) for approval:

(a) Rent (leases, and rental agreements, including meeting and lodging room rentals);

(b) Tuition and conference registration fees;

(c) Insurance premiums;

(d) Extension or connection of public utilities for FAA buildings or installations;

(e) Subscriptions to publications - interpreted to include electronic methods of data recording. Software subscription services are therefore authorized;

(f) Purchases of products or services in foreign countries and the advance payment is required by the laws or regulations of the foreign country concerned;

(g) Advance payments to Federal agencies;

(h) Advance payments that do not exceed \$15,000 or an equivalent amount in foreign currency;

(i) Expense of investigations in foreign countries;

(j) Enforcement of the customs or narcotics laws; or

- (k) Other types of transactions excluded by agency procedures under statutory authority.
- (2) The CO should transmit the following together with a recommendation of approval of a contractor's request for advance payment to the COCO:
 - (a) A summary of the solicitation or contract requirements;
 - (b) Comments on the contractor's need for advance payments and potential benefits to FAA from providing advance payments;
 - (c) CO's proposed actions to minimize FAA's risk of loss including proposed advance payment contract terms; and
 - (d) Justification of any proposal for waiver of interest charges.
- (3) FAA should charge interest on advance payments received in excess of the Contractor's current needs, except for awards made to state governments, or instrumentalities thereof. The interest will be charged at the Department of Treasury current value of funds rate. The COCO may authorize advance payments without interest if in FAA's interest.
- (4) Letters of Credit are not authorized at FAA.
- (5) Payments will be made by electronic funds transfer whenever possible. The advance financing arrangement may be terminated if the contractor is unwilling or unable to minimize the elapsed time between receipt of the advance and disbursement of the funds. In lieu of termination, the CO will require the contractor to not request FAA funds until the contractor's checks are ready to be forwarded to the payees. Advance payments may be processed as follows:
 - (a) 30-Day Advance: The contractor is authorized to request, in writing, FAA funds in amounts needed to cover its own disbursements of cash in the next 30 calendar days for contract performance. The contractor's request typically requires 30 calendar days for processing. The 30-day advance is the preferred method of providing advance funds to a contractor.
 - (b) 3-Day Advance: The contractor is authorized to request FAA funds in amounts needed to cover its own disbursements of cash in the next 3 working days for contract performance. When this payment method is selected, FAA will deposit funds in the contractor's designated account within 3 working days after receipt of the request by the FAA accounting office. This method of providing advance funds to a contractor is the least preferred method and will be used sparingly.

11 Withholding Payment Added 10/2007

- a. The CO should not routinely withhold funds from contractor payments. A withholding should be considered only when:

(1) Satisfactory progress has not been achieved by a contractor during any period for which a payment is to be made; or

(2) The CO expects difficulty in the timely and complete receipt of information required by the contract.

b. Withholding should not be used as a substitute for good contract management, and COs should not withhold funds without cause.

c. Decisions to withhold and the specific amount to be withheld must be made by the CO on a case-by-case basis. Such decisions must be based on the CO's assessment of past performance and the likelihood that such unsatisfactory performance will continue.

d. The CO should notify the contractor in writing when withholding funds. The notice should include:

(1) The amount to be withheld;

(2) The specific cause for the withholding; and

(3) Any remedial actions that can be taken by the contractor in order to receive payment of the funds withheld.

e. Generally, the CO should not withhold an amount greater than 10% of the contract value and may withhold only in those specific instances where the CO has determined, in writing, that it is necessary to protect the interests of FAA.

f. Upon completion of all contract requirements, withheld amounts should be promptly released for payment.

12 Prompt Payment Revised 7/2013

a. *Discount for Prompt Payment.* The CO is encouraged to include meaningful discounts for prompt payment in contracts whenever possible. Decisions to accept or not accept a prompt payment discount are made by the cognizant accounting office based on the value of the discount offered. There is no minimum time period for which discounts will be taken. Any discount will be taken if determined cost effective by the accounting office.

b. *Due Date for Payment.* For the sole purpose of computing an interest penalty that might be due the contractor, the CO may establish a period for constructive acceptance of products and services that reflects the minimum necessary for inspection or testing. The period should be within seven (7) days after the contractor has delivered products or performed services in accordance with the terms and conditions of the contract. The CO may negotiate a longer period of acceptance, which must be stated in the contract.

(1) The due date for most invoice payments, (e.g. single [lump sum] payments, partial payments, etc.) will be not later than the 30th day after FAA receives a proper invoice as designated in the contract, or not later than the 30th day after products are delivered or services rendered to FAA acceptance point, whichever is later. Longer due dates may be specified for inspection, demonstrations or timed events.

(a) To the extent practicable, all invoices for contracts with small businesses will be paid not later than the 15th day after receipt of a proper invoice, rather than the 30th day as specified above. This accelerated payment to small businesses does not in any way modify the payment due date (30th day) for applying the Prompt Payment late payment interest penalty provisions as specified in paragraph c. "Interest" below.

(b) For all new awards, the CO must indicate in PRISM whether the contractor is a small business by checking "Y" or "N" in the respective box. If a contractor is a small business, the accelerated payment terms must also be indicated. For existing awards, Accounting and Contracts will be provided a listing of all existing small business awards converted to accelerated payment.

(c) On a temporary basis, invoice payments for all contracts are being accelerated to the extent practicable using the same methodology as described under b.(1)(a) above to facilitate the payment of small business subcontractors. AMS Clause 3.3.1-20 "Providing Accelerated Payment to Small Business Subcontractors" is required for all SIRs and contracts. The clause may also be added to existing contracts.

(2) For all progress payments except construction, the due date will be not later than the 30th day after FAA approval of contractor estimates of work or of services accomplished. For the sole purpose of computing interest penalties due the contractor, FAA approval may be deemed to have occurred constructively on the 7th day after the contractor estimates are received with all necessary supporting documentation by FAA.

(3) Progress payments under construction contracts will be due not later than the 14th day after receipt of a proper invoice (including required supporting documentation as designated in the contract). The CO has the discretion to specify a longer period (a period longer than 30 days may not be prescribed) if more time is required to afford FAA a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract.

(4) For payment of any amounts retained by the CO, the due date will be not later than the 30th day after approval by the CO for release to the contractor. There is no provision for constructive acceptance.

(5) Final invoice payments will be due not later than the 30th day after FAA receives a proper invoice in the designated billing office, or not later than the 30th day after FAA acceptance of the work or services, whichever is later. For the contractor's final invoice where the payment amount is subject to contract settlement actions, acceptance should be deemed to have occurred on the effective date of the contract settlement.

c. Interest.

(1) The contractor is entitled to interest penalties if payments are made after the payment due date. The FAA may automatically pay interest without request from the contractor, when all of the following conditions, if applicable, have been met:

- (a) A proper invoice as specified in the contract has been received;
- (b) There is no disagreement over quantity, quality, or contractor compliance with any contract requirement;
- (c) In the case of a final invoice, the payment amount is not subject to further contract settlement actions between FAA and the contractor;
- (d) FAA paid the contractor after the due date;
- (e) Interest owed is over \$1.00 in value; and
- (f) No off-set action has been filed by an appropriate Federal jurisdiction (such as IRS or DOL).

(2) Interest is not required on payment delays due to:

- (a) Defective invoices;
 - (b) Disagreement between FAA and contractor over payment amount;
 - (c) Issues involving contract compliance; or
 - (d) Amounts temporarily withheld or retained in accordance with the terms of the contract.
- (3) No interest will be paid to the contractor as a result of delayed contract financing payments.
- (4) The interest paid will be at the rate established by the Secretary of the Treasury referred to as the "Renegotiation Board Interest Rate."
- (5) Interest will not accrue for more than one year.

d. Interim Voucher for Time-and-Material, Labor-Hour, and Cost Reimbursement Services.

(1) Contractors awarded time-and-material (T&M), labor-hour (LH), or cost reimbursement contracts are generally authorized to seek payment during the course of the contract.

(2) An interim voucher is a contractor's request for payment during the course of performance under a T&M, LH, or cost reimbursement contract, but excluding the final payment. Interim vouchers are considered a form of contract financing; however, interest penalties must be paid on late payments for interim vouchers under T&M, LH, or cost reimbursement service contracts.

(3) For purposes of computing late payment interest penalties for interim vouchers, the due date for payment is the 30th day after FAA receives a proper invoice.

(4) If the invoice is found to be improper, it must be returned within 7 days after the date FAA receives the invoice.

e. *Acceptance.* For payment purposes, FAA acceptance should be documented on either a receiving report or by a certified invoice. The receiving report or certified invoice should be forwarded immediately to the accounting office with a copy to the CO, and each should receive it no later than the 5th working day after FAA acceptance or approval, unless other arrangements have been made. This period of time does not extend the payment due dates prescribed in the contract. The receiving report or certified invoice should, as a minimum, include the following:

- (1) Contract number or other authorization for products delivered or services performed;
- (2) Description of products delivered or services performed;
- (3) Quantities of products received and accepted, if applicable;
- (4) Date products delivered or services performed;
- (5) Date products or services were accepted by the designated FAA official (or progress payment request was approved); and
- (6) Signature and printed name of the designated FAA official responsible for acceptance or approval.

13 Fast Payment Added 10/2007

a. Fast payment procedures may be included SIRs and contracts when it may not be possible for the receiving location to make timely notice to the payment office that supplies are accepted. In order for fast payment procedures to be authorized by the CO:

- (1) The SIR or contract must be firm fixed-price;
- (2) Title must vest in the FAA upon shipment or receipt;
- (3) The supplier must agree to replace or repair supplies damaged in transit or not conforming to contract requirements; and
- (4) Safeguards must be in place to ensure supplies are shipped, received, and acceptable.

b. Invoices will be paid on the basis of the contractor's delivery of supplies to a post office or common carrier for shipment to the specific destination.

- c. For supplies delivered by means other than the Postal Service or common carrier, invoices will be paid on the basis of first receipt of the supplies by FAA.
- d. The CO has 180 days from the date title to the supplies vests in FAA to instruct the contractor to replace, repair, or correct nonconforming supplies at the contractor's expense.
- e. All invoices and shipping containers must be marked "FAST PAY."

14 Invoices Revised 4/2012

a. Proper Invoice.

(1) For FAA to make payment under a contract, a proper invoice must be submitted to FAA by the contractor. If the invoice does not meet the definition of a proper invoice per section (2) below, it must be rejected within seven (7) days of receipt.

(2) A proper invoice contains the following:

(a) Name and address of contractor;

(b) Invoice date;

(c) Contract number (to include applicable order numbers and Contract Line Item Numbers (CLINs);

(d) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed;

(e) Shipping and payment terms, to include, when applicable:

(i) Shipment number and date of shipment,

(ii) Bill of lading number and weight (for government bills of lading), and

(iii) Prompt payment discount terms.

(f) Contractor or bank address where electronic payment is to be sent;

(g) Name, title, phone number, and mailing address of person to be notified of a defective invoice;

(h) Other information required by the contract (i.e. certified payrolls, evidence of shipment, etc); and

(i) Invoice number, account number, and/or any other identifying number agreed under the contract.

b. Invoice Routing and Acceptance.

(1) All contracts must specify the FAA employees (or offices) to whom invoices are to be sent.

(2) Invoices must be date stamped when received by FAA Accounting as specified under (b)(4) below, and this date will serve as the reference point for Prompt Payment standards (see Prompt Payment in this Section).

(3) When COs create awards in PRISM, they will be required to select whether the invoice matching for payment in Delphi will be Two (2) or Three (3) Way match. Detailed information on invoice matching and acceptance requirements can be found on the PRISM website.

(a) Three (3) Way match: 3-Way match requires the presence of an award, an invoice, and the acceptance of the good(s) and/or services, by line, in PRISM. The acceptance of the good(s) and/or services in PRISM must annotate the date(s) good(s) were delivered or the services were provided as well as the date(s) of acceptance, where applicable. Most awards will be on a 3-Way match basis except those authorized for a 2-Way match as specified under (b)

(b) Two (2) Way match: 2-Way match requires the presence of an award and invoice without the need for manual acceptance in PRISM, and is authorized for the following types of procurements:

(i) Awards that include Fast Payment procedures;

(ii) Awards for services placed on Recurring Payment; and

(iii) Leases and utilities.

(4) Varying locations in FAA may have specialized routing of invoices for supplies, services, or construction; however, in all cases, one original of the invoice must be delivered to accounting (AMZ-110). The routing and acceptance of a proper invoice should generally follow these steps:

(a) One original of the invoice will be delivered to accounting (AMZ-110), while one original will be sent to both the CO and Contracting Officer's Representative (COR). Electronic submission of invoices will be allowed per Agency finance guidelines and prior agreement with the finance office;

(b) Once received by accounting, the invoice will be date stamped unless received electronically and assigned to an Accounts Payable (A/P) technician;

(c) The A/P technician will send an e-mail notification to the CO and COR requesting acceptance of the invoice and completion of the an invoice certification sheet or other payment documentation;

(d) Based on documentation or a receiving report from the COR and the presence of a proper invoice, the COR or CO will perform acceptance in PRISM if necessary for a 3-Way match. If a 2-Way match, the COR or CO will ensure that the supplies and/or services on the invoice have been received. When a COR has not been designated, the CO may designate in writing a FAA Program Office employee to perform acceptance in PRISM. After invoice review and any acceptance, the CO will complete an invoice certification sheet or other payment documentation for the contract file and advise the A/P technician that the invoice is ready for payment. This CO approval of invoices may be delegated in writing to the receiver where firm-fixed-price commercial supplies or services are being purchased.

(e) The A/P technician will then verify that all invoice requirements have been met and process the invoice for payment; and

(f) Copies of all payment documentation will be retained in the contract file.

(5) Additional guidance regarding various special types of payment (such as Fast Payment and Recurring Payment) may be found elsewhere in this Section.

15 Debt Collection Added 10/2007

a. Contract debts arise in various ways. The following are some examples:

(1) Damages or excess costs related to defaults in performance.

(2) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property or material.

(3) FAA expense of correcting defects.

(4) Overpayments related to errors in quantity or billing or deficiencies in quality.

b. Once an indication of a contract debt surfaces, it should promptly be determined if a debt is due to FAA and in what amount. A demand for payment should be made as soon as the amount of the refund has been calculated. In general, interest will be due on any contract debt that is unpaid after 30 days. For debts under \$100,000, excluding interest, if further collection is not practicable, or would cost more than the amount of recovery, FAA may compromise the debt or terminate or suspend further collection action.

c. Local legal counsel must review and approve any debt collection activity.

16 Assignment of Claims Added 10/2007

a. Assignment of contract payments is the transfer by a contractor of its right to be paid by FAA for contract performance to a bank, trust company, or other financing institution. This

assignment of contract payments serves as security for a loan to the contractor. An assignment of contract payments extinguishes the right of the transferor (assignor, contractor) to all future payments due under the contract, and establishes that right in the transferee (assignee, financial institution).

b. FAA may permit assignment of contract payments to help contractors obtain independent financing. When the contract provides for advance payments, assignments are not permitted.

c. No payments made by FAA to the assignee under any contract assigned may be recovered because of any liability of the contractor to FAA. This immunity of the assignee is effective whether the contractor's liability arises from, or independently of, the assigned contract.

d. A contractor may assign payments due or to become due under a contract if all the following conditions are met:

(1) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency;

(2) The assignment covers all unpaid amounts payable under the contract; and

(3) The contract terms do not expressly prohibit the assignment.

e. The CO processes requests for assignments from the contractor or financial institution. The contractor notifies the CO that an assignment is contemplated, and the assignment becomes effective upon written acknowledgment by the CO. An assignment should adhere to the following:

(1) Assignments for corporations must be:

(a) Executed by an authorized representative, validated by the secretary or the assistant secretary of the corporation, and impressed with the corporate seal; or

(b) Accompanied by a true copy of the authorization from the corporation's board of directors for the signing representative to execute the assignment.

(2) Assignments for partnerships may be signed by one partner, if accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute the assignment on behalf of the partnership.

(3) Assignments by an individual must be signed by that individual in the presence of and acknowledged before a notary public or other person authorized to administer oaths.

(4) The assignee must forward an original and three copies of the notice of assignment, together with one true copy of the instrument of assignment, to each of the following:

(a) CO;

(b) Surety on any bond applicable to the contract; and

(c) FAA accounting office designated to make payments.

(5) Before acknowledging the assignment, the CO should ensure that the contract permits assignment, the assignment covers only money due or to become due, and, unless waived, the assignee is registered separately in the Central Contractor Registration.

f. Upon notification of a desire for an assignment, the CO will:

(1) Notify the accounting office designated to make payments of the pending assignment; and

(2) Immediately notify the disbursing officer when assignment is accepted and ensure delivery of the instrument to the disbursing officer.

g. A release of assignment is required whenever the contractor wishes to reestablish its right to receive further payments and a balance remains due under the contract. If the assignee releases the contractor from an assignment of claims under the contract, the contractor must provide the CO, any Surety on any bond, and the FAA accounting office with the following:

(1) Written Notice of Release; and

(2) A true copy of the release instrument.

Each FAA addressee of a Notice of Release of Assignment should acknowledge receipt of the notice.

h. Assignments may be made to banks, trust company or financing institutions only.

17 Automatic Deobligation Revised 4/2012

After 365 days of inactivity and a total line item obligation balance with an absolute value of \$100 or less, a system-generated modification to deobligate this line item balance will be created and approved in PRISM. This deobligation modification will be created and approved through an automated process that will be run no less than once a year. The FAA payment office will adjust all financial records to reflect the fact that no undisbursed obligation balance remains on the line item. Any valid invoices received by FAA after this deobligation will be paid out of appropriate available funding after CO approval.

18 Incremental Funding for Fixed-Price Contracts Added 10/2011

a. A fixed-price contract may be incrementally funded only if—

(1) The contract (excluding any options) or any exercised option—

- (a) Is for severable services;
 - (b) Does not exceed one year in length; and
 - (c) Is incrementally funded using funds available as of the date the funds are obligated; or
- (2) The contract uses funds available from two or more fiscal years and—
- (a) Is a major systems acquisition; or
 - (b) Congress has otherwise authorized incremental funding
- b. An incrementally funded fixed-price contract will be fully funded as soon as funds are available.

B Clauses

[view contract clauses](#)

C Forms Revised 4/2006

[view procurement forms](#)

[Electronic Funds Transfer \(EFT\) Waiver Request](#)

D Appendix Added 10/2007

1 Appendix - Sample Notice of Assignment Added 10/2007

NOTICE OF ASSIGNMENT

To: _____ (Address to one of the parties listed in subparagraph A.16.e.4 above)

This is a Notice of Assignment for Contract No. _____ dated _____, entered into between _____ (Contractor's name and address) and the FAA for _____ (Describe the nature of the contract).

Moneys due or to become due under this contract have been assigned. A true copy of the instrument of assignment executed by the Contractor on _____ (Date) is attached to the original notice. Payments due or to become due under this contract should be made to the undersigned assignee.

Please return, to the undersigned, the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and signed by an FAA employee acknowledging receipt on behalf of the addressee.

Very truly yours,

_____ (Name of Assignee)

By _____ (Signature of Signing Officer)

_____ (Title of Signing Officer)

_____ (Address of Assignee)

ACKNOWLEDGEMENT

The FAA acknowledges receipt of the above notice and a copy of the instrument of assignment. These documents were received at _____ (a.m./p.m.) on _____ (Date).

_____ (FAA Signature)

_____ (FAA Title)

On Behalf of _____ (Name of the FAA Addressee of this Notice)